

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7519 of 1996

with

SPECIAL CIVIL APPLICATION NO. 7570 OF 1996

WITH

SPECIAL CIVIL APPLICATION NO. 7694 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
HARPALSINH M JADEJA

Versus

DY EXECUTIVE ENGINEER

-----

sca 7519 of 1996

MR IS SUPEHIA for Petitioners

MR HS MUNSHAW for Respondent No. 1

SERVED for Respondent No. 3, 4, 5

sca 7570 of 1996

Mr.A.D.PADIVAL FOR THE PETITIONER

MR HS MUNSHA FOR THE RESPONDENTS

sca 7694 of 1996

MR HS MUNSHA FOR THE PETITIONER

RESPONDENTS SERVED.

-----

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 07/02/97

ORAL JUDGEMENT

In this group of petitions, common questions are involved. Therefore, they are being disposed of by this common judgment. Special civil application No. 7519 of 1996 ( first petition) is filed by three employees, special civil application No. 7570 of 1996 is filed by seven employees (second petition) and special civil application No. 7694 of 1996 (third petition) is filed by the employer-Gujarat State Water Supply and Sewerage Board ( Board ) against the interim common order dated 9.9.1996 recorded by the Labour court , Rajkot below Ex.16 in Complaint case No. 3 of 1995.

The employer-Board is constituted for the main objective of providing drinking water to the villages and in most remote places in the State of Gujarat and also providing sewerage system. The mechanical division of the said Board takes up the scheme of providing drinking water and sewerage system to the villages depending upon the population and availability of water resource. The said division also takes up the projects of drilling of bores and puts up hand pumps on the bores. The mechanical division also looks after the operation and maintenance of the hand pump. On receipt of complaints from Gram panchayats which are usually looking after the maintenance of the bores,the mechanical division sends the employees for repairs and maintenance of the said hand pumps.

The case of the workmen is that they are serving as daily wagers and doing work of helpers with the management of the Board since long and the Board tried to terminate their services. Six persons initially went to the Labour court who had applied for interim relief. Later on, 12 employees joined as parties. All the 18 employees were granted ad-interim relief initially by the Labour court in the complaint under Section 33-A of the Industrial Disputes Act, 1947 ( 'ID Act' ) which came to be vacated

by the Labour court by the impugned order dated 9.9.1996 in respect of 12 persons who subsequently joined the complaint proceedings. Six employees who had initiated the proceedings by filing the complaint under Section 33-A being Complaint No.3 of 1995 succeeded in getting the ad-interim relief confirmed till the hearing; whereas, 12 persons failed to get the interim relief as the ad-interim relief granted by the Labour court came to be vacated. With the result, the first two petitions are filed by the group of 3 and 7 employees respectively; whereas, the third petition is filed by the Board against six employees in whose favour interim relief came to be granted by the Labour court. It appears that two employees have not moved in the matter and have not taken the dispute any further. Thus, 16 out of 18 employees are before this court in these three petitions. 10 employees in the first two petitions failed to get interim relief. Therefore, first two petitions are filed at their instance ; whereas, the Board has filed the third petition challenging grant of interim relief in favour of six employees.

After having examined the facts and circumstances and the material emerging from the record of the petitions and considering the limited jurisdictional scope and sweep of the writ petition, this court is satisfied that there is no fit and proper case for interference against the impugned order.

The employees' case is that they are working as helpers with the Board and the Board has tried to change the service conditions and, therefore, they initiated the legal battle by filing the complaint under Section 33-A and during the pendency of the complaint, the employees applied for interlocutory order against their likely termination . The case of the Board is that the employees are not entitled to any relief as they are employed on daily wage basis essentially for scarcity relief work. The Board has pleaded that usually, the regular staff employed by it is sufficient enough to look after the job of maintenance and repairs , but during drought, burden of work increases on the mechanical division as usages and user of bores in hand pumps tremendously goes up. It is, therefore, contended by the Board that the Board is required to employ daily wagers for short period till next monsoon starts. Accordingly, the employees who have gone to the Labour court used to be employed on daily wages and they were getting work depending upon the rainfall and scarcity work and also depending upon monetary funds. It is, therefore, contended that the employees who filed the complaint under Section

33-A were casual ,seasonal daily wagers and are not entitled to any relief as they could be discontinued when scarcity work is over. The Board also placed reliance on several circulars of the Government pertaining to scarcity relief work.

The Labour court has observed that there is no case for change of service conditions prima facie requiring action or order under Section 33-A of the IDAct.

It is a settled proposition of law that the court is obliged to consider the following three aspects while entertaining an application for interlocutory order :

- (i) prima facie case;
- (ii) balance of convenience, and
- (iii) irreparable injury.

After having examined the facts and circumstances and the relevant proposition of law, the employees are not entitled to interlocutory order or injunction against their termination as prima facie, the employees are engaged as casual labourers in the project and/or scheme on account of famine or drought. Casual labourers who are working on seasonal work are not entitled to benefits of Section 25-F of the ID Act. It would be interesting to note the provisions of Section 2 (oo) (bb) of the ID Act which reads as under :

"2. Definitions- In this Act, unless there is anything repugnant in the subject or context:"

x x x x

"(oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason, whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman, or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf'; or

(bb) termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

On a plain perusal of sub-clause (bb) of Section (oo) , it becomes crystal clear that it excludes from retrenchment cases of (i) termination of service of a workman on account of non-renewal of the contract of employments on its expiry and (ii) loss of service on the termination of the contract of employment in terms of a stipulation contained in such contract. Therefore, termination of service due to the non-renewal of the contract of service which had expired or termination of employment as per a stipulation contained in the contract of employment in that behalf falls outside the scope of 'retrenchment' in Section 2 (oo) of the IDAct and the workman whose services have been so terminated will not be entitled to the benefit of Section 25-F of the ID Act.

It is prima facie noticed by this court that the employees of the Board in these three petitions came to be engaged as casual / seasonal employees on daily wage basis on account of scarcity and drought at different periods and intervals. It is noticed from the record of the Board that as and when there was scarcity ,such persons were employed and their services were discontinued on arrival of rains. Therefore,prima facie,the Labour court is justified in refusing interim relief to the employees who are petitioners in the first and second petitions. However, this court has failed to comprehend as to why and how the same cadre of employees in the petition filed by the Board would be entitled to the interim relief.Therefore,the interim relief against anticipated termination of six persons who are respondents in the third petition is prima facie not proper and legal and,therefore, the third petition is required to be allowed.

It may be noted that this court in Division Bench decision in J.J.Shrimali vs. District Development Officer, 1989 (2) G.L.H. 12, has clearly expounded the relevant proposition of law on this score relating the material provisions of the ID Act. It is clearly laid down in the said decision that where on account of famine and drought, scarcity relief works are undertaken and some persons employed on express understanding that their appointments were absolutely temporary and on an adhoc basis, termination of services of such persons does not amount to retrenchment and they are not entitled to wages for notice period and compensation. The petitioners are as such engaged from the inception as casual,seasonal labourers on daily wages and they are known as Muster

labourers. They are employed in such relief operations. Therefore, provisions of Section 25-F entitling protection would not be attracted prima facie.

There is no prima facie case in favour of the workmen. There is also no case for irreparable injury. Balance of convenience tilts also in favour of the Board. It is prima facie noticed from the record that the employees engaged by the Board in scarcity relief programmes and projects have been doing and getting work for short spell in the year and they are discontinued on closure and completion of such scarcity relief programmes. Therefore, there is no irreparable injury likely to be caused and balance of convenience is also not in their favour. However, upon the request of this court, the Executive Officer of the Board has given an undertaking the terms whereof are as follows: .

'I hereby undertake that in future as and when Gujarat Water Supply and Sewerage Board is entrusted scarcity relief work by the State of Gujarat, the present respondents who are provided work since last few years purely on temporary and daily wage basis during the scarcity relief works as helpers would be again recalled and provided work in accordance with their seniority as purely temporary and daily wage helpers till the scarcity relief works are continued and grants are made available by the State of Gujarat.'

The ratio propounded by the Honourable Apex court in U.P.State Co-operative Land Development Bank Ltd. vs. Taz Mulak Ansari and others is squarely attracted to the facts of the present petitions. Thus, this group of three petitions is covered directly by the ratio of the said decision.

After having thrown into scales both the rival versions and the material facts and relevant proposition of law, this court is satisfied that the employees-workers who are casual, seasonal daily wagers engaged in scarcity programmes are not entitled to interim relief during the pendency of their complaint under Section 33-A of the ID Act. Therefore, the first two petitions are rejected and the third petition of the Board is allowed vacating the interim relief granted in favour of the respondent-employees in that behalf. Rule is discharged in first and second petitions and Rule is made absolute in the third petition. There shall be no order as to costs.

Upon request of Mr. Padival, the question of interim order for suspension of the order recorded by this court is heard. Mr. Padival states that common order of this court maybe stayed for six weeks. However, Mr. Munshaw for the Board states that his earlier statement in the main petition shall remain operative till 28th February 1997. Hence, request for stay does not survive.

---